

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2411

Introduced by Assembly Member Jones
(Coauthors: Assembly Members Charles Calderon, Carter, Feuer,
Salas, Solorio, and Torres)

February 19, 2010

An act to amend ~~Sections 100, 700.01, 739, and 1063 of, to add Section 119.7 to Section 120 of,~~ and to add Part 9 (commencing with Section 12880) to Division 2 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2411, as amended, Jones. Pet insurance.

Existing law provides for the regulation of various types of insurance by the Department of Insurance.

This bill would provide for the regulation of pet insurance, as defined. The bill would, in connection with the sale of a new, amended, or renewed pet insurance policy on or after July 1, 2011, require pet insurers to reasonably disclose to the consumer (1) if the policy excludes coverage on the basis of a preexisting condition or other disorder, as specified, (2) any policy provision that limits coverage in a specified manner, and (3) whether the insurer reduces coverage or increases premiums based on claims experience in any preceding policy period. The bill would also, with respect to pet insurance policies marketed, issued, amended, renewed, or delivered on or after July 1, 2011, require pet insurers that determine claim payments on any basis to clearly

disclose that basis in the policy and through a link on the insurer's Internet Web site, as specified. The bill would enact other related conforming provisions. *The bill would require the department to post on its Internet Web site a list of the insurers that offer, issue, or underwrite pet insurance in the state, the names of the products that those insurers offer, issue, or underwrite, the names of their general agents with authority to offer, issue, or underwrite pet insurance, and a link to insurers' company profiles maintained by the department.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 100 of the Insurance Code is amended~~
2 ~~to read:~~
3 ~~100. Insurance in this state is divided into the following classes:~~
4 ~~(1) Life~~
5 ~~(2) Fire~~
6 ~~(3) Marine~~
7 ~~(4) Title~~
8 ~~(5) Surety~~
9 ~~(6) Disability~~
10 ~~(7) Plate glass~~
11 ~~(8) Liability~~
12 ~~(9) Workmen's compensation~~
13 ~~(10) Common carrier liability~~
14 ~~(11) Boiler and machinery~~
15 ~~(12) Burglary~~
16 ~~(13) Credit~~
17 ~~(14) Sprinkler~~
18 ~~(15) Team and vehicle~~
19 ~~(16) Automobile~~
20 ~~(17) Mortgage~~
21 ~~(18) Aircraft~~
22 ~~(19) Mortgage guaranty~~
23 ~~(19.5) Insolvency~~
24 ~~(19.6) Legal insurance~~
25 ~~(19.7) Pet insurance~~
26 ~~(20) Miscellaneous~~
27 ~~SEC. 2. Section 119.7 is added to the Insurance Code, to read:~~

119.7. “Pet insurance” has the same meaning as that term is defined in Section 12880.

SEC. 3. Section 700.01 of the Insurance Code is amended to read:

700.01. In addition to any or all of the classes of insurance that it is permitted to transact by all other applicable provisions of this code, any incorporated insurer admitted or hereafter admitted for one or more of the classes of insurance stated in Section 100, except life, title, mortgage, or mortgage guaranty, shall (subject to any limitations contained in its articles of incorporation or charter) be admitted after January 1, 1990, for any or all of the following classes, upon making application therefor and complying with all applicable requirements of law, if its paid-in capital is not less than two million six hundred thousand dollars (\$2,600,000) or the aggregate of the amounts hereinafter set forth opposite the classes transacted by it in the United States if an alien insurer, or in any jurisdiction if other than an alien insurer, whichever is lower; provided, that the paid-in capital of incorporated insurers not transacting either fire, marine or surety insurance making application under this section shall be at least three hundred thousand dollars (\$300,000) in excess of that aggregate amount. In no event shall any incorporated insurer, as a condition for its admission, be permitted to have a paid-in capital of less than one million dollars (\$1,000,000) or be required to have a paid-in capital in excess of two million six hundred thousand dollars (\$2,600,000) for any or all of the classes of insurance hereinafter set forth.

Number and name of class	Amount of capital
- 2. Fire	\$350,000
- 3. Marine	350,000
- 5. Surety	350,000
- 6. Disability	250,000
- 7. Plate glass	100,000
- 8. Liability	} —
- 9. Workers’	
— compensation	
- 10. Common carrier	
— liability	300,000 for
	any or all of
	these
- 11. Boiler and machinery	100,000

1	12. Burglary	100,000
2	13. Credit	100,000
3	14. Sprinkler	100,000
4	15. Team and vehicle	100,000
5	16. Automobile	200,000
6	18. Aircraft	100,000
7	19. Pet	100,000
8	20. Miscellaneous	100,000

9

10 This section shall not be applicable to life, title, mortgage, or
 11 mortgage guaranty insurance, and an insurer now or hereafter
 12 admitted to transact life, title, mortgage, or mortgage guaranty
 13 insurance shall not be admitted under the provisions of this section,
 14 but its admission is governed by other applicable provisions of
 15 this code.

16 Insurers admitted for one or more classes of insurance on
 17 December 31, 1989, shall be governed by the provisions of this
 18 section in effect as of December 31, 1989, until December 31,
 19 1999. After December 31, 1999, all insurers governed by this
 20 section shall meet the capital requirements of this section as
 21 become effective January 1, 1990. Insurers admitted for one or
 22 more classes of insurance on December 31, 1989, that thereafter
 23 amend their certificate of authority to add a class or classes of
 24 insurance shall become subject to the capital requirements of this
 25 section.

26 SEC. 4. Section 739 of the Insurance Code is amended to read:
 27 739. As used in this article, these terms shall have the following
 28 meanings:

29 (a) "Adjusted RBC Report" means a Risk-Based Capital (RBC)
 30 report that has been adjusted by the commissioner in accordance
 31 with subdivision (c) of Section 739.2.

32 (b) "Corrective Order" means an order issued by the
 33 commissioner specifying corrective actions that the commissioner
 34 has determined are required.

35 (c) "Domestic insurer" means any life or health insurer or
 36 property and casualty insurer organized in this state.

37 (d) "Foreign insurer" means any life or health insurer or property
 38 and casualty insurer that is licensed to do business in this state but
 39 is not domiciled in this state.

1 (e) ~~“Life or health insurer” means any admitted insurer issuing~~
2 ~~insurance subject to Part 2 (commencing with Section 10110) of~~
3 ~~Division 2, or a licensed property and casualty insurer writing only~~
4 ~~disability insurance.~~

5 (f) ~~“NAIC” means the National Association of Insurance~~
6 ~~Commissioners.~~

7 (g) ~~“Negative trend” means, with respect to a life or health~~
8 ~~insurer, a negative trend over a period of time, as determined in~~
9 ~~accordance with the “Trend Test Calculation” included in the RBC~~
10 ~~Instructions defined in subdivision (i).~~

11 (h) ~~“Property and casualty insurer” means any admitted insurer~~
12 ~~writing insurance as described in Section 102, 103, 105, 107, 108,~~
13 ~~109, 110, 111, 112, 113, 114, 115, 116, 118, 119.5, 119.6, 119.7,~~
14 ~~or 120, but does not include monoline mortgage guaranty insurers,~~
15 ~~financial guaranty insurers, or title insurers.~~

16 (i) ~~“RBC Instructions” means the RBC Report, including~~
17 ~~risk-based capital instructions adopted by the NAIC, and as the~~
18 ~~RBC Instructions may be amended by the NAIC from time to time~~
19 ~~in accordance with the procedures adopted by the NAIC.~~

20 (j) ~~“RBC Level” means an insurer’s Company Action Level~~
21 ~~RBC, Regulatory Action Level RBC, Authorized Control Level~~
22 ~~RBC, or Mandatory Control Level RBC where:~~

23 (1) ~~“Company Action Level RBC” means, with respect to any~~
24 ~~insurer, the product of 2.0 and its Authorized Control Level RBC.~~

25 (2) ~~“Regulatory Action Level RBC” means the product of 1.5~~
26 ~~and its Authorized Control Level RBC.~~

27 (3) ~~“Authorized Control Level RBC” means the number~~
28 ~~determined under the risk-based capital formula in accordance~~
29 ~~with the RBC Instructions.~~

30 (4) ~~“Mandatory Control Level RBC” means the product of .70~~
31 ~~and the Authorized Control Level RBC.~~

32 (k) ~~“RBC Plan” means a comprehensive financial plan~~
33 ~~containing the elements specified in subdivision (b) of Section~~
34 ~~739.3. If the commissioner rejects the RBC Plan, and it is revised~~
35 ~~by the insurer, with or without the commissioner’s~~
36 ~~recommendation, the plan shall be called the “Revised RBC Plan.”~~

37 (l) ~~“RBC Report” means the report required in Section 739.2.~~

38 (m) ~~“Total Adjusted Capital” means the sum of:~~

39 (1) ~~An insurer’s statutory capital and surplus.~~

40 (2) ~~Other items, if any, that the RBC Instructions may provide.~~

1 ~~SEC. 5. Section 1063 of the Insurance Code is amended to~~
2 ~~read:~~

3 ~~1063. (a) Within 60 days after the original effective date of~~
4 ~~this article, all insurers, including reciprocal insurers, admitted to~~
5 ~~transact insurance in this state of any or all of the following classes~~
6 ~~only in accordance with the provisions of Chapter 1 (commencing~~
7 ~~with Section 100) of Part 1 of this division: fire (see Section 102);~~
8 ~~marine (see Section 103), plate glass (see Section 107), liability~~
9 ~~(see Section 108), workers' compensation (see Section 109),~~
10 ~~common carrier liability (see Section 110), boiler and machinery~~
11 ~~(see Section 111), burglary (see Section 112), sprinkler (see Section~~
12 ~~114), team and vehicle (see Section 115), automobile (see Section~~
13 ~~116), aircraft (see Section 118), pet (see Section 119.7), and~~
14 ~~miscellaneous (see Section 120), shall establish the California~~
15 ~~Insurance Guarantee Association (the association); provided,~~
16 ~~however, this article shall not apply to the following classes or~~
17 ~~kinds of insurance: life and annuity (see Section 101), title (see~~
18 ~~Section 104), fidelity or surety including fidelity or surety bonds,~~
19 ~~or any other bonding obligations (see Section 105), disability or~~
20 ~~health (see Section 106), credit (see Section 113), mortgage (see~~
21 ~~Section 117), mortgage guaranty, insolvency or legal (see Section~~
22 ~~119), financial guaranty or other forms of insurance offering~~
23 ~~protection against investment risks (see Section 124), the ocean~~
24 ~~marine portion of any marine insurance or ocean marine coverage~~
25 ~~under any insurance policy including the following: the Jones Act~~
26 ~~(46 U.S.C. Sec. 688), the Longshore and Harbor Workers'~~
27 ~~Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar~~
28 ~~federal statutory enactment, or any endorsement or policy affording~~
29 ~~protection and indemnity coverage, or reinsurance as defined in~~
30 ~~Section 620, or fraternal fire insurance written by associations~~
31 ~~organized and operating under Sections 9080 to 9103, inclusive.~~
32 ~~Any insurer admitted to transact only those classes or kinds of~~
33 ~~insurance excluded from this article shall not be a member insurer~~
34 ~~of the association. Each insurer admitted to transact a class of~~
35 ~~insurance included in this article, including the State Compensation~~
36 ~~Insurance Fund, as a condition of its authority to transact insurance~~
37 ~~in this state, shall participate in the association whether established~~
38 ~~voluntarily or by order of the commissioner after the elapse of 60~~
39 ~~days following the original effective date of this article in~~
40 ~~accordance with rules to be established as provided in this article.~~

1 ~~It shall be the purpose of the association to provide for each~~
2 ~~member insurer insolvency insurance as defined in Section 119.5.~~

3 ~~(b) The association shall be managed by a board of governors,~~
4 ~~composed of nine member insurers, each of which shall be~~
5 ~~appointed by the commissioner to serve initially for terms of one,~~
6 ~~two, or three years and thereafter for three-year terms so that three~~
7 ~~terms shall expire each year on December 31, and shall continue~~
8 ~~in office until his or her successor shall be appointed and qualified.~~
9 ~~At least five members of the board shall be domestic insurers. At~~
10 ~~least three of the members shall be stock insurers, and at least three~~
11 ~~shall be nonstock insurers. The nine members shall be~~
12 ~~representative, as nearly as possible, of the classes of insurance~~
13 ~~and of the kinds of insurers covered by this article. In case of a~~
14 ~~vacancy for any reason on the board, the commissioner shall~~
15 ~~appoint a member insurer to fill the unexpired term. In addition to~~
16 ~~the nine member insurers, the membership of the board shall also~~
17 ~~include one public member appointed by the President pro Tempore~~
18 ~~of the Senate, one public member appointed by the Speaker of the~~
19 ~~Assembly, one business member appointed by the commissioner,~~
20 ~~and one labor member appointed by the commissioner.~~

21 ~~(c) The association shall adopt a plan of operations, and any~~
22 ~~amendments thereto, not inconsistent with the provisions of this~~
23 ~~article, necessary to assure the fair, reasonable, and equitable~~
24 ~~manner of administering the association, and to provide for other~~
25 ~~matters as are necessary or advisable to implement the provisions~~
26 ~~of this article. The plan of operations and any amendments thereto~~
27 ~~shall be subject to prior written approval by the commissioner. All~~
28 ~~members of the association shall adhere to the plan of operation.~~

29 ~~(d) If for any reason the association fails to adopt a suitable plan~~
30 ~~of operation within 90 days following the original effective date~~
31 ~~of this article, or if at any time thereafter the association fails to~~
32 ~~adopt suitable amendments to the plan of operation, the~~
33 ~~commissioner shall after hearing adopt and promulgate reasonable~~
34 ~~rules as are necessary or advisable to effectuate the provisions of~~
35 ~~this chapter. These rules shall continue in force until modified by~~
36 ~~the commissioner after hearing or superseded by a plan of~~
37 ~~operation, adopted by the association and approved by the~~
38 ~~commissioner.~~

39 ~~(e) In accordance with its plan of operation, the association may~~
40 ~~designate one or more of its members as a servicing facility, but~~

~~1 a member may decline this designation. Each servicing facility
2 shall be reimbursed by the association for all reasonable expenses
3 it incurs and for all payments it makes on behalf of the association.
4 Each servicing facility shall have authority to perform any
5 functions of the association that the board of governors lawfully
6 may delegate to it and to do so on behalf of and in the name of the
7 association. The designation of servicing facilities shall be subject
8 to the approval of the commissioner.~~

~~9 (f) The association shall have authority to borrow funds when
10 necessary to effectuate the provisions of this article, and may
11 provide in its plan of operations for any of the following:~~

~~12 (1) The issuance of notes, bonds, or debentures, or the
13 establishment of a special purpose trust or other entity, solely for
14 the purpose of facilitating a financing.~~

~~15 (2) The securing of that borrowing or those notes, bonds, or
16 debentures by pledging or granting liens or mortgages, or by
17 otherwise encumbering its real or personal property, including,
18 but not limited to, premiums levied under Section 1063.5.~~

~~19 (g) The association, either in its own name or through servicing
20 facilities, may be sued and may use the courts to assert or defend
21 any rights the association may have by virtue of this article as
22 reasonably necessary to fully effectuate the provisions thereof.~~

~~23 (h) The association shall have the right to intervene as a party
24 in any proceeding instituted pursuant to Section 1016 wherein
25 liquidation of a member insurer as defined in Section 1063.1 is
26 sought.~~

~~27 (i) (1) The association shall have an annual audit of its financial
28 condition conducted by an independent certified public accountant.
29 The audit shall be conducted, to the extent possible, in accordance
30 with generally accepted auditing standards (GAAS) and the report
31 of the audit shall be submitted to the commissioner.~~

~~32 (2) The association shall annually audit at least one-third of the
33 service companies retained by the association to adjust claims of
34 insolvent insurers. The audits shall (A) assure that all covered
35 claims are being investigated, adjusted, and paid in accordance
36 with customary industry standards and practices and all applicable
37 statutes, rules and regulations, and (B) examine the management
38 and supervisory systems overseeing the claims functions. The
39 audits shall be conducted by the association or an independent
40 auditor, provided that the three largest service companies, as~~

1 ~~measured by the number of claims processed for the association~~
2 ~~during the previous three fiscal years, shall be audited by an~~
3 ~~independent auditor at least once every three years. The association~~
4 ~~shall implement systems to retain independent auditing firms for~~
5 ~~the purpose of this paragraph, provided that no one firm is~~
6 ~~designated or utilized as an exclusive provider. Audits conducted~~
7 ~~pursuant to this paragraph shall be submitted annually to the~~
8 ~~commissioner for review.~~

9 (j) ~~The commissioner shall examine the association to the same~~
10 ~~extent as, and in accordance with, the requirements of Article 4~~
11 ~~(commencing with Section 730) of Chapter 1 of Part 2 of Division~~
12 ~~2, which sets forth the examination requirements applicable to~~
13 ~~admitted insurers. A copy of the examination report shall be filed~~
14 ~~with the Chairpersons of the Senate and Assembly Committees~~
15 ~~on Insurance no later than December 31 of the year the report is~~
16 ~~completed.~~

17 *SECTION 1. Section 120 of the Insurance Code is amended to*
18 *read:*

19 120. Miscellaneous insurance includes insurance against loss
20 from damage done, directly or indirectly by lightning, windstorm,
21 tornado, *or* earthquake ~~or~~; insurance under an open policy
22 indemnifying the producer of any motion picture, television,
23 theatrical, sport, or similar production, event, or exhibition against
24 loss by reason of the interruption, postponement, or cancellation
25 of such production, event, or exhibition due to death, accidental
26 injury, or sickness preventing performers, directors, or other
27 principals from commencing or continuing their respective
28 performance or duties; *pet insurance, as defined in Section 12880;*
29 and any insurance not included in any of the foregoing classes,
30 and which is a proper subject of insurance.

31 ~~SEC. 6.~~

32 *SEC. 2. Part 9 (commencing with Section 12880) is added to*
33 *Division 2 of the Insurance Code, to read:*

34
35 **PART 9. PET INSURANCE**
36

37 12880. For purposes of this part, the following definitions shall
38 apply:

39 (a) "Pet insurance" means an individual or group insurance
40 policy that provides coverage for veterinary expenses.

(b) “Veterinarian” means an individual who holds a valid license to practice veterinary medicine from the Veterinary Medical Board pursuant to Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code or other appropriate licensing entity in the jurisdiction in which he or she practices.

(c) “Veterinary expenses” means the costs associated with any medical advice, diagnosis, care, or treatment provided by a veterinarian, including, but not limited to, the cost of drugs prescribed by a veterinarian.

(d) “Hereditary disorder” means an abnormality that is genetically transmitted from parent to offspring and may cause illness or disease.

12880.1. A policy of pet insurance that is marketed, issued, amended, renewed, or delivered to a resident of this state on or after July 1, 2011, regardless of the situs of the contract or master group policyholder, shall be subject to this part.

~~12880.4.~~

12880.2. (a) In connection with the sale of a new, amended, or renewed policy of pet insurance on or after July 1, 2011, a pet insurer shall reasonably disclose all of the following to the consumer:

(1) If the policy excludes coverage due to any of the following:

(A) A preexisting condition.

(B) A hereditary disorder.

(C) A congenital anomaly or disorder.

(2) Any policy provision that limits coverage through a waiting or affiliation period, a deductible, coinsurance, or an annual or lifetime policy limit.

(3) Whether the insurer reduces coverage or increases premiums based on claims experience in any preceding policy period.

(b) If a pet insurer uses any of the terms set forth in ~~subparagraph~~ *subparagraphs* (A) to (C), inclusive, of paragraph (1) of subdivision (a) in a policy of pet insurance, the insurer shall include a definition of the term in the policy and shall make that definition available via a link on the main page of the insurer’s Internet Web site.

(c) A pet insurer that determines claim payments under a pet insurance policy on any basis shall clearly disclose that basis in

1 the policy and through a link on the main page of the insurer's
2 Internet Web site.

3 (d) A pet insurer that uses a benefit schedule to determine claim
4 payments under a pet insurance policy shall do both of the
5 following:

6 (1) Include the applicable benefit schedule in the policy.

7 (2) Disclose all benefit schedules used by the insurer under its
8 pet insurance policies through a link on the main page of the
9 insurer's Internet Web site.

10 (e) A pet insurer that determines claim payments under a pet
11 insurance policy based on usual and customary fees, or any other
12 reimbursement limitation based on prevailing veterinary service
13 provider charges, shall do both of the following:

14 (1) Include a usual and customary fee limitation provision in
15 the policy that clearly describes the insurer's basis for determining
16 usual and customary fees and how that basis is applied in
17 calculating claim payments.

18 (2) Disclose the insurer's basis for determining usual and
19 customary charges under the policy via a link on the main page of
20 the insurer's Internet Web site.

21 (f) The disclosures required by this section shall be in addition
22 to any other disclosures required by other applicable law.

23 *12880.3. Notwithstanding any other provision of law, the*
24 *department shall publish on its Internet Web site a list of the*
25 *insurers that offer, issue, or underwrite pet insurance in the state.*
26 *With respect to each insurer listed, the department shall publish*
27 *on its Internet Web site the names of the pet insurance products*
28 *that the insurer offers, issues, or underwrites in the state, including*
29 *any name marketed to consumers, the name of the insurer's general*
30 *agent or general agents with authority to offer, issue, or underwrite*
31 *pet insurance in the state, if any, and a link to the insurer's*
32 *company profile maintained by the department.*